

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION

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In re:	)	Chapter 11
	)	Case Nos. 01-47214 - JBR
Malden Mills Industries, Inc., et al.,	)	through 01-47217 - JBR
	)	(Jointly Administered)
Debtors.	)	
_____	)	

Memorandum of Decision

This case is before the Court on the Motion of Caterpillar Financial Services, Inc. (“Caterpillar”) for Summary Judgment Relative to Objection to and Request to Estimate Proof of Claim of Caterpillar Financial Services, Inc. (Doc. 2327) and the Opposition of the Claims Committee of Malden Mills Industries, Inc. and its Affiliated Debtors (“Committee”) to the Motion of Caterpillar Financial Services, Inc. for Summary Judgment (Doc. 2350).

Background

This dispute stems from the Claims Committee’s objection to Caterpillar’s proof of claim in which Caterpillar asserts an unsecured claim of \$9,759,487.26 in connection with a lease (the “Lease”), as modified at the March 23, 2003 hearing (the “Modified Lease”). In the Lease, the Debtor leased two generators and related equipment from Caterpillar. In the course of the Chapter 11 case the Debtor and Caterpillar agreed to modify the Lease pursuant to which, *inter alia*, the lease payments were reduced. As agreed in the Assented to Motion to Assume and Modify the Debtors’ Executory Contract with Caterpillar Financial Services (“Caterpillar Motion”), approved by the Court at the March 23, 2003 hearing, Caterpillar had the right to file

an unsecured claim for the difference between the Lease payments and the Modified Lease payments plus any unpaid prepetition obligations. In calculating the proposed unsecured claim the reduced payments under the Modified Lease were to be adjusted to present value using the prevailing 3-month Treasury Bill discount rate at the time payments became certain and payable pursuant to the Plan. (Doc. 1284). The 3-month Treasury Bill discount rate was based upon the default provisions of the original Lease between Caterpillar and the Debtor.

During the same March 23, 2003 hearing, there was discussion with the Court regarding reserving the right to object to Caterpillar's unsecured claim, which, at the time of the March hearing, had yet to be filed. Mr. Leonetti stated on the record that the Creditors Committee reserved its right to object to Caterpillar's claim.

Mr. Leonetti<sup>1</sup>: . . . Certainly, I think as the motion makes clear to approve it, that the Committee's rights to object to Caterpillar's unsecured claim are fully reserved. While there's a formula for reaching the top line number of the claim - - in other words, the amount of dollars that they would be owed under the contract minus what they are paid, certainly the Committee has the right, as does the debtor, to argue that that number - - there should be substantial subtractions for mitigation for the value of the returned equipment, and at least with the Committee's respect, objection is on the proper capitalization rate to apply. So at least we can save that fight for another day.

The Court asked if anybody else wanted to be heard on the matter and the attorneys for the Agent for the Lending Banks and the Debtor spoke up.

Ms. McColm<sup>2</sup>: Your Honor - - and similarly, we reserve our rights to object - -

The Court: Of course.

Ms. McColm: - - to Caterpillar's unsecured claim.

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<sup>1</sup> Attorney for the Creditors Committee. After confirmation of the Debtors' Plan, he became the attorney for the Claims Committee.

<sup>2</sup> Attorney for the Agent.

The Court: Do you think there's anything - - do either one of you think there's anything in the order that does not permit you to reserve your rights to subsequent claims? Okay. Fine.

Mr. Leonetti: No.

Mr. Morrier<sup>3</sup>: In fact, Your Honor, it's specific in the motion that the debtors also have that right. . . [W]e had attempted to reach a fixed number with which the debtors could agree. We instead, at Caterpillar's request, agreed to allow them to file and us to object, if necessary, to that claim. That right belongs to all of the parties.

The attorney for Caterpillar did not respond or object to the reservation of rights by the Debtors, the Creditors Committee, or the Agent during the hearing.

The Claims Committee was created upon the confirmation of the Plan. Pursuant to Article VII of the Plan and paragraph 43 of the Confirmation Order, the Claims Committee is authorized and empowered to prosecute or settle claims on behalf of the Debtor. The objection to Caterpillar's proof of claim was filed "on behalf of the Reorganized Debtors" by the Claims Committee on April 12, 2004. (Doc. 2133) Caterpillar attacks the Claims Committee's right to object to the claim.

#### Discussion

The Court may enter summary judgment if the "pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). When the Court enters summary judgment, it should "draw all reasonable inferences from the facts in the manner most favorable to the nonmovant." *In re Beatrice*, 296 B.R. 576, 579 (1st Cir. B.A.P. 2003); see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 106 S.Ct. 2505, 2510-11, 91 L.Ed.2d 202 (1986); *In re Varrasso*, 37 F.3d 760,

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<sup>3</sup> Attorney for the Debtors.

763 (1st Cir. 1994). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 249-50, 106 S.Ct. at 2510-11. “In this context, ‘genuine’ means that the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party [and] ‘material’ means that the fact is one that might affect the outcome of the suit under the governing law.” *Nahan v. Pan American Grain Mfg. Co., Inc.*, 62 F.supp.2d 419, 422 (D. Puerto Rico, 1999) citing *United States v. One Parcel of Real Property with Buildings, Appurtenances, and Improvements, Known as Plot 20, Lot 17*, 960 F.2d 200, 204 (1st Cir. 1992).

In this case there is a dispute as to whose rights to object have been reserved. Caterpillar argues that the Debtor reserved a limited right to object to its unsecured claim. According to Caterpillar, the Debtor had only the limited right to object to the calculation of the difference between the Modified Lease payments and the original Lease payments, that is, the Debtor may only object to mathematic errors in the calculation.<sup>4</sup> Caterpillar argues that the Debtor does not have the right to object to the use of the 3-month Treasury Bill discount rate as the Debtor’s right to object to the type of discount rate expired when the Debtor assumed an agreement that included the 3-month Treasury Bill discount rate and the Court approved the agreement.

Caterpillar also argued that the Claims Committee does not have standing to object to its unsecured claim because the *Creditors* Committee, not the Claims Committee, had reserved the right to object during the hearing in 2003. Caterpillar attacks the Claims Committee’s right to

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<sup>4</sup> Mr. Monaghan’s argued to the Court, “The reservation of rights states there’s two different parties that have two different reservation of rights. First, is the debtor, and the debtor has only the right to object to calculation of the difference between the modified lease payments and the original lease payments. . . It’s arithmetic.” Transcript, Hearing on 10/14/05.

bring an objection to the claim arguing that the power resides with the now defunct Creditors Committee and the Reorganized Debtors. The Claims Committee had not been formed at the time of the March 2003 hearing. In that hearing, the Agent, the Creditors Committee, and the Debtors asked the Court to reserve their rights to object to Caterpillar's unsecured claim. The Creditors Committee no longer exists as it was dissolved pursuant to the Order of August 14, 2003 confirming the Debtors' Plan of Reorganization. (Doc. 1708). Pursuant to Article VII of the Plan and paragraph 43 of the Confirmation Order, the Claims Committee is authorized and empowered to prosecute or settle claims on behalf of the Debtor. The Claims Committee argues that the Court has the ability to rule that no order that the Court entered in this case was intended to take away the rights that had been reserved in the March 2003 hearing:

I think if you wanted to you [the Court] could put an end to this right now and rule that no order you entered in this case was intended to have any such effect, and then the parties could proceed directly to the merits of the claim, which include, by the way, not just the discount rate but also the question of mitigation; and then we won't have to seek to disqualify Mr. Monaghan from continuing to represent Caterpillar because they'll be a witness. Transcript, Hearing on 10/14/05.

The Claims Committee suggests that the Creditor Trust<sup>5</sup> could be substituted as a party for the Claims Committee in order to make this objection, or it could join the objection, or the Creditor Trust could assign whatever rights it reserved from the March 2003 hearing to the Claims Committee.

The Court reserved the right "to construe and enforce this Order" in the March 26, 2003 order. The Court believes that the rights reserved are to be construed broadly, and therefore all

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<sup>5</sup> The Creditor Trust was the successor of the official committee of unsecured creditors upon confirmation of the Plan. It was established for the benefit of holders of general unsecured claims. Article XIII, Paragraph 13.8 of the Plan gave to the Creditor Trust "any and all rights, duties, obligations and authority that resided in the Committee, whether pursuant to this Plan, Bankruptcy law or otherwise . . ." (Doc. 1574).

parties were reserving all their rights. Additionally, at the March 23, 2003 hearing Caterpillar did not object nor suggest that anything other than the broadest possible reservation of rights was being preserved. Only after Caterpillar's proof of claim was filed and the objection filed did Caterpillar raise what might be construed to be an overly technical argument that is little more than an attempt to play a game of "gotcha," however unintentional. Because the Creditor Trust can join in the objection or assign the rights reserved to the Creditors Committee, Caterpillar's Motion for Summary Judgment on the grounds the objector lacks standing is denied.

There are also other genuine issues of material fact such as whether the default provision of the Modified Lease is applicable. Caterpillar argues that a default occurred when the Reorganized Debtor failed to enter into a service contract with Solar, a Caterpillar affiliate. According to the Committee, the negotiations broke down because Solar and Caterpillar interpreted the Order to empower them to substantially renegotiate the terms of the existing service agreement by demanding either (1) immediate payment in full of Solar's prepetition claim; or (2) substantially higher payments for maintenance going forward. Additionally, the proposed service agreement was going to exclude provisions that had been covered under the previous Service Agreement between Solar and the Debtor. Thus in the Committee's view, there has been no default.

If there has been a default, the parties dispute what the proper discount rate should be and from what point in time it should be applied. The discount rate determines Caterpillar's unsecured claim and is utilized if and when the Debtor defaults on the Modified Lease between the parties. It is used to calculate the present value of the difference between the Lease payments and the reduced payments under the Modified Lease. Finally, the parties disagree as to whether and what extent Caterpillar was required to mitigate damages, and whether and to what extent

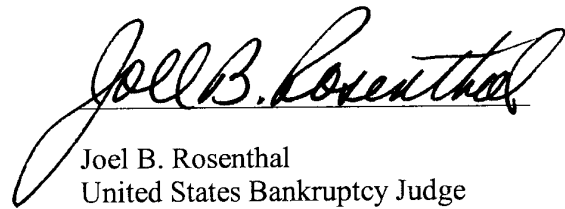
Caterpillar has done so.

Conclusion

The Court finds that there are genuine issues of material fact and therefore the Motion for Summary Judgment filed by Caterpillar Financial Services, Inc., is DENIED. The Creditors Trust shall have fourteen (14) days to join in this objection, or to assign its reserved rights to the Claims Committee.

November 15, 2005

By the Court,

A handwritten signature in black ink, reading "Joel B. Rosenthal". The signature is written in a cursive style with a large, looping initial "J".

Joel B. Rosenthal  
United States Bankruptcy Judge